passengers and those who accompany them to and from its stations is too well established to need authority in its support, and is, indeed, not disputed in this case.

Upon the whole case we are of opinion that there is no error in the judgment of the circuit court, which is affirmed. Affirmed.

FLINT *v.* COMMONWEALTH.

Nov. 21, 1912.

[76 S. E. 308.]

1. Criminal Law (§ 219*)—Intoxicating Liquors—Sufficiency of Warrant.—The warrant upon which accused was convicted charged that accused, on a certain date, within one mile of the corporate limits of the city named, and within the jurisdiction of the mayor of the city, did unlawfully sell, by retail, at his residence within one mile of the corporate limits of said city, wines, etc., to the person named; he, the said accused, not then and there having a license from the state of Virginia to do so. Held, that the warrant would support a judgment of conviction, in the absence of objections to any formal defects taken at trial.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 453-455; Dec. Dig. § 219.*]

2. Criminal Law (§ 258*)—Judgment—Time of Entry.—The court had authority to enter judgment of conviction for illegally selling intoxicants, on a verdict rendered at a preceding term of court.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 545-561; Dec. Dig. § 258.*]

3. Appeal and Error (§ 971*)—Witnesses (§ 240*)—Review—Discretion—Leading Questions.—Trial courts have a large discretion as to allowing leading questions, which the Supreme Court of Appeals will not lightly interfere with.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3852-3857; Dec. Dig. § 971;* Witnesses, Cent. Dig. §§ 795, 837-839, 841-845; Dec. Dig. § 240.*]

4. Criminal Law (§ 88*)—Jurisdiction—Corporation Courts.—Under Code 1904, § 1032, providing that the jurisdiction of the corporate authorities of each town or city, in criminal matters, shall extend one mile beyond their corporate limits, the corporation court of the city of Buena Vista had jurisdiction of offenses committed one mile beyond the city limits.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 127; Dec. Dig. § 88.*]

---

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Error to Corporation Court of Buena Vista.

Marion Flint was convicted of unlawfully selling intoxicants, and brings error. Affirmed.

Hugh A. White, of Lexington, for plaintiff in error.
The Attorney General, for the Commonwealth.

KEITH, P. A warrant was issued by the mayor of Buena Vista, which charged, "that Marion Flint, on the 23d day of April, 1911, within one mile of the corporate limits of the said city, and within the jurisdiction of said mayor of said city, did unlawfully sell, by retail, at his residence in West Buena Vista, Virginia, within one mile of the corporate limits of said city," wine, ardent spirits, malt liquors, and mixtures thereof to John Turner; he, the said Marion Flint, not then and there having a license from the state of Virginia so to do. Upon this warrant he was arrested, tried, found guilty, a fine assessed against him of $50 and costs, and he was further required to give a bond in the penalty of $500 not to violate the statute under which he was being tried within the period of 12 months.

Flint appealed to the corporation court of the city of Buena Vista, where he was tried before a jury on the 7th day of August, 1911, found guilty, and his fine assessed at $50; and thereupon the court, in addition to the fine, sentenced the accused to be imprisoned for 30 days, and to renew his bond in the penalty of $500.

No judgment was entered upon the verdict at the term of court at which it was rendered; but at the October term the attorney for the commonwealth moved the court to enter judgment on the verdict rendered by the jury at the former term, which by inadvertence the court had omitted to do, to which motion the defendant objected. The court sustained the motion and proceeded to enter judgment nunc pro tunc, and thereupon the defendant moved in arrest of judgment and to vacate the judgment, which motion the court overruled, and the defendant again excepted. During the trial several objections were made by the defendant, all of which were overruled, and, a writ of error having been awarded to the final judgment of the corporation court, we will consider the errors assigned.

It is insisted that the motion in arrest of judgment should have been sustained, (1) because the court was without jurisdiction to try and hear the cause; (2) because there was no sufficient warrant upon which to base a charge or conviction; and (3) because there was no sufficient judgment, either to pay any fine, or to be confined in jail.

[1] We will first consider the sufficiency of the warrant.

We are by no means satisfied that the warrant is not in due form. As has been said by this court frequently, the same exactness and precision is not required in the statement of an offense, where it is to be heard upon a warrant, as in more formal proceedings by information or indictment. In this case it appears, further, that the defendant made no objection whatever to the form of the warrant in the corporation court. Had he then objected, whatever formal defects may have appeared in the warrant could have been cured.

As was said in Robinson *v.* Commonwealth, 111 Va. 844, 69 S. E. 518: "Under the broad powers conferred upon the trial court by section 4107 of the Code, it was entirely competent for the court, of its own motion, pending the trial of an appeal from the justice of the peace, to direct the attorney for the commonwealth to change the warrant from an attempt to commit larceny of oats to an attempt to obtain money by false pretenses. While it would have been more regular, perhaps, to have directed the change to have been made before the trial began, yet where the prisoner did not ask for a continuance, and there is nothing to indicate that he was prejudiced by the amendment during the trial, the irregularity is harmless."

We think, therefore, that if there were formal objections to the warrant, the court had ample power, under the statute, to amend it, and that the accused cannot be permitted to go to trial upon a warrant which the court had full power to amend, and, after verdict and judgment, for the first time to make known his objection.

[2] With respect to the judgment entered by the corporation court, there is no irregularity. The court had full authority to enter the judgment upon a verdict rendered at a preceding term. The court speaks of it as a nunc pro tunc order, and in a certain sense it was—that is, it was the entry of a judgment at the October term which the court might have entered at a former term; but in effect it was in the exercise of its ordinary jurisdiction. The prosecution had, indeed, proceeded to a verdict; but until judgment was rendered it was a pending action, upon which it was the duty of the court to render judgment, unless it had seen fit for good cause to set it aside. Cleek *v.* Commonwealth, 62 Va. 780.

It is assigned as error that the court erred in permitting improper questions and improper evidence, as set forth in bills of exceptions Nos. 1 and 2.

[3] While we will not go so far as to say that this court will not reverse because a leading question has been propounded to a witness, which was duly excepted to, we do reiterate that the trial courts are clothed with a large discretion in such matters,

which this court will not lightly undertake to control; and the exceptions under consideration do not disclose a case of error prejudicial to the defendant which warrants a reversal of the judgment.

Nor do we think that the trial court erred in refusing to set the verdict aside as contrary to the law and the evidence; and this brings us to the remaining question, and the one upon which the plaintiff in error chiefly relies—that the court was without jurisdiction to try the case.

[4] The warrant charges the offense to have been committed within one mile of the corporate limits of the city of Buena Vista, and the contention of plaintiff in error is that the court was without jurisdiction with respect to offenses committed a mile beyond the city limits. For this position he relies with apparent confidence upon Agner's Case, 103 Va. 811, 48 S. E. 493.

That case involved the jurisdiction of the mayor of the city of Buena Vista, and the syllabus of the case is as follows: "The criminal jurisdiction of the mayor of the city of Buena Vista is the same as that of justices of the peace of that city; and neither extended, at the time of the supposed offense alleged in this case, beyond the city limits. Sections 1032 and 1033 of the Code (the latter as amended by Acts 1893-94, p. 664) applied, at the date of the warrant of arrest in this case, to towns only, and not to cities." Judge Whittle delivered the opinion of the court, and, after demonstrating that at the time the offense there under consideration was committed the mayor of the city of Buena Vista had no jurisdiction of offenses within one mile of its corporate limits, he uses the following language: "The correctness of the court's ascertainment of the state of the law, at the time of the alleged offense and issuance of the warrant, is accentuated by the circumstances that legislation was subsequently found necessary to invest the authorities of cities with the territorial jurisdiction contended for on behalf of the commonwealth in this case. Accordingly, it appears that by an act approved May 17, 1903, amending and re-enacting chapter 44 of the Code, the criminal jurisdiction of the corporate authorities of each own or city is extended one mile beyond the corporate limits. Acts 1902-04, § 1032, p. 422."

It is clear, therefore, that Agner's Case does not maintain the position of plaintiff in error, but that this case is controlled by section 1032, as it appears in the Code of 1904, as follows: "The jurisdiction of the corporate authorities of each town or city, in criminal matters, and for imposing and collecting a license tax on all shows, performances, and exhibitions, shall extend one mile beyond the corporate limits of such town or city."

The evidence fully establishes that the offense was committed

within the jurisdictional limits of the city of Buena Vista, and, indeed, every fact required to sustain the verdict of the jury. The judgment of the corporation court is therefore affirmed.

Affirmed.

Note.

Caution as to Description of Offense in Future Warrants.—In Lacy *v.* Palmer, 93 Va. 159, 24 S. E. 930, the court, while stating the general rule that in warrants of arrest the same particularity is not expected or required as in indictments, held that greater precision in stating the offense should be observed in future, in view of the fact that justices of the peace are now clothed with exclusive original jurisdiction to try misdemeanors and the warrant gives to the accused the only information as to the nature of the offense with which he is charged.

JOHNSTON & GROMMET BROS. *v.* BUNN & MONTEIRO.

Nov. 21, 1912.

[76 S. E. 310.]

1. Contracts (§ 284*)—Construction Contracts—Final Estimate of Engineer—Condition Precedent.—When a construction contract provides that the engineer in charge of the work shall certify in writing its final completion, together with a final estimate showing the balance due, and that the procuring of such certificate and final estimate shall constitute a condition precedent to any right of action by the contractor against the owner, a suit by a contractor to recover a balance claimed to be due under the contract, without notice to such engineer that the work had been completed, and without any request for such certificate and estimate, is premature; and such suit cannot be maintained when based on estimates of engineers who are strangers to the transaction.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 1292-1302, 1308-1310, 1312-1316, 1326-1338, 1340-1342, 1344-1346, 1350, 1351; Dec. Dig. § 284.*]

2. Contracts (§ 292*)—Construction Contracts—Certificate of Engineer—Fraud or Mistake.—Under a construction contract making it a condition precedent to action that the engineer shall give a certificate of completion and final estimate, a contractor may maintain an action on the contract to recover the amount due, where the conduct of the engineer designated, is fraudulent, or the engineer has been guilty of a mistake so gross as to amount to a fraud on the rights of the opposite party.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 1310, 1343; Dec. Dig. § 292.*]

---

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.